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14
15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 DEANNA MOREY, an individual, on behalf of) Case No. 3:11-cv-01517-L-BLM
herself and all others similarly situated,)

18 Plaintiff,)

19 vs.)

**FIRST AMENDED CLASS ACTION
COMPLAINT**

20 LOUIS VUITTON NORTH AMERICA, INC.,)
and DOES 1 through 50,)

21 Defendants.)
22)
23)

24 Plaintiff Deanna Morey, on behalf of herself and all others similarly situated ("Plaintiff"),
25 complains and alleges upon information and belief based, among other things, upon the
26 investigation made by Plaintiff by and through her attorney, as follows:

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I. INTRODUCTION

1. California Civil Code section 1747.08 generally states that when a merchant is engaged in a retail transaction with a customer, the merchant may not collect personal identification information from a customer paying for goods with a credit card.

2. Defendant operates retail stores throughout the United States, including California. Defendant was, and is, engaged in a pattern of unlawful business practices whereby it utilizes a customer information capture card which contained preprinted spaces for credit card customers to write their respective: (i) name; (ii) email address; (iii) address (including ZIP code); (iv) birth date; (iv) home telephone number; and (v) mobile telephone number. It was, and is, Defendant's policy and practice to request credit card customers to write their respective personal identification information upon the customer information capture card in the form of their: (i) names; (ii) email addresses; (iii) addresses; (iv) birth dates; (iv) home telephone number; and (v) mobile telephone number, and to subsequently enter such information into its electronic customer database at the point-of-sale. Defendant's acts and practices as herein alleged were at all times intentional.

3. This action arises from Defendant's violations of California Civil Code section 1747.08, by and through Defendant's collection of Plaintiffs' and Class members' personal identification information in conjunction with credit card transactions, during the point-of-sale process at Defendant's retail establishments during the period of time beginning May 23, 2010 and continuing through the present (herein referred to as the "Liability Period" or "Class Period").

4. Plaintiff does not seek any relief greater than or different from the relief sought for the Class of which Plaintiff is a member. The action, if successful, will enforce an important right affecting the public interest and would confer a significant benefit, whether pecuniary or non-pecuniary, on a large class of persons. Private enforcement is necessary and places a disproportionate financial burden on Plaintiff in relation to Plaintiff's stake in the matter.

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1 **II. JURISDICTION AND VENUE**

2 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
3 matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000
4 and is a class action in which greater than two-thirds of the Class members are citizens of states
5 different from Defendant.

6 6. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts
7 and transactions giving rise to this action occurred in this district and because Defendant:

8 (a) is authorized to conduct business in this district and has intentionally
9 availed itself of the laws and markets within this district through the promotion, marketing,
10 distribution and sale of its products in this district;

11 (b) does substantial business in this district; and

12 (c) is subject to personal jurisdiction in this district.

13 **III. THE PARTIES**

14 **A. Plaintiff**

15 7. Plaintiff Deanna Morey is a resident of California. During the Liability Period,
16 Plaintiff purchased merchandise at one of Defendant's stores located in California with a credit
17 card and had her personal identification information collected by Defendant in conjunction with
18 the credit card transaction. Specifically, Defendant provided Plaintiff with a customer
19 information capture card which contained preprinted spaces for Plaintiff to write her: (i) name;
20 (ii) email address; (iii) address (including ZIP code); (iv) birth date; (iv) home telephone number;
21 and (v) mobile telephone number. At Defendant's request, while standing at the point-of-sale,
22 Plaintiff wrote her personal identification information upon the customer information capture in
23 the form of her: (i) name; (ii) email address; (iii) address; (iv) birth date; (iv) home telephone
24 number; and (v) mobile telephone number. Plaintiff is informed and believes, and on that basis
25 alleges, that the information provided by Plaintiff was subsequently entered by Defendant into an
26 electronic customer database at the point-of-sale.

27 8. Plaintiff brings this class action against Defendant, pursuant to Rule 23 of the
28 Federal Rules of Civil Procedure, on behalf of herself and all persons from whom Defendant

collected personal identification information in conjunction with a credit card purchase transaction at a California retail store during the period of time beginning May 23, 2010 and continuing through the date of trial (herein referred to as the "Class"). Excluded from the Class definition are any specific transactions wherein a credit card issued to a business was used, or any specific transactions that involved shipping, delivery, servicing, installation or for a special order. Also excluded from the Class are Defendant, its corporate parents, subsidiaries and affiliates, officers and directors, any entity in which Defendant has a controlling interest, and the legal representatives, successors or assigns of any such excluded persons or entities.

B. Defendant

9. Louis Vuitton North America, Inc. (herein referred to as "Defendant") is a Delaware corporation with its principal place of business in New York.

IV. CONDUCT GIVING RISE TO VIOLATIONS OF THE LAW

10. As specified in Paragraph 7 above, during the Liability Period, Plaintiff conducted a transaction with Defendant which did not involve mail order, shipping or cash advances.

11. However, as part of Defendant's Information Capture Policy, and in conjunction with the credit card sales transaction, Defendant provided Plaintiff with a customer information capture card which contained preprinted spaces for Plaintiff to write her: (i) name; (ii) email address; (iii) address (including ZIP code); (iv) birth date; (iv) home telephone number; and (v) mobile telephone number.

12. At Defendant's request, while standing at the point-of-sale, Plaintiff wrote her personal identification information upon the customer information capture in the form of her: (i) name; (ii) email address; (iii) address; (iv) birth date; (iv) home telephone number; and (v) mobile telephone number.

13. Plaintiff is informed and believes, and on that basis alleges, that the information provided by Plaintiff was subsequently entered by Defendant into an electronic customer database at the point-of-sale.

14. Defendant's conduct as alleged herein expressly violated California Civil Code section 1747.08. California Civil Code section 1747.08(a) provides, in relevant part, that:

1 [N]o person, firm, partnership, association, or corporation that accepts credit cards
2 for the transaction of business shall . . .

3 (1) *Request*, or require as a condition to accepting the credit card as payment in
4 full or in part for goods or services, *the cardholder to write any personal*
5 *identification information upon the credit card transaction form or otherwise.*

6 (2) *Request*, or require as a condition to accepting the credit card as payment in
7 full or in part for goods or services, *the cardholder to provide personal*
8 *identification information, which the person, firm, partnership, association, or*
9 *corporation accepting the credit card writes, causes to be written, or otherwise*
10 *records upon the credit card transaction form or otherwise.*

11 3) Utilize, in any credit card transaction, a credit card form which contains
12 preprinted spaces specifically designated for filling in any personal identification
13 information of the cardholder. (Emphasis added).

14 15. California Civil Code section 1747.08(b) further provides that "For purposes of
15 this section, 'personal identification information' means information concerning the cardholder,
16 *other than information set forth on the credit card, and including, but not limited to, the*
17 *cardholder's address and telephone number*" (emphasis added).

18 16. California Civil Code section 1747.08(c) provides that the prohibition against
19 collecting personal identification information in connection with credit card transactions does not
20 apply if the credit card is being used as a deposit to secure payment in the event of default, loss,
21 damage or other similar occurrence; for cash advance transactions; if the retailer is contractually
22 obligated to provide personal identification information in order to complete the credit card
23 transaction or is obligated to collect and record the personal identification information by federal
24 law or regulation; or if personal identification information is required for any special purpose
25 incidental but related to the credit card transaction, such as for information related to shipping,
26 delivery, servicing, installation or for a special order. Plaintiff's transaction, as alleged herein,
27 did not involve any of the exceptions under California Civil Code section 1747.08(c).

28 17. Liability under California Civil Code section 1747.08 is established simply by
collecting personal identification information from a customer paying by credit card. *Pineda v.*
Williams-Sonoma Stores, Inc., 51 Cal.4th 524, 528 (2011); *see also Florez v. Linens 'N Things,*
Inc., 108 Cal.App.4th 447, 451-453 (2003).

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1 18. There is no exception under California Civil Code section 1747.08 for marketing
2 or advertising purposes. To the contrary, California Civil Code section 1747.08 was specifically
3 enacted to address "the misuse of personal identification information for, inter alia, marketing
4 purposes." *Pineda*, 51 Cal.4th at 532 (citing *Absher v. AutoZone, Inc.*, 164 Cal. App. 4th 332,
5 345 (2008)).

6 19. Indeed, California Civil Code section 1747.08 is violated "even if the consumer's
7 response was voluntary and made only for marketing purposes." *Florez*, 108 Cal.App.4th at 453.

8 20. The penalty for violating California Civil Code section 1747.08 is up to two-
9 hundred fifty dollars (\$250) for the first violation and up to one thousand dollars (\$1,000) for
10 each subsequent violation, to be assessed and collected in a civil action under this statute by,
11 *inter alia*, the person paying with the credit card.

12 **V. PLAINTIFF'S CLASS ALLEGATIONS**

13 21. This lawsuit is brought on behalf of an ascertainable statewide class pursuant to
14 Rule 23 of the Federal Rules of Civil Procedure, consisting of all persons from whom Defendant
15 collected personal identification information in conjunction with a credit card purchase
16 transaction at a California retail store during the period of time beginning May 23, 2010 and
17 continuing through the date of trial (herein referred to as the "Class"). Excluded from the Class
18 are any specific transactions wherein a credit card issued to a business was used, or any specific
19 transactions that involved shipping, delivery, servicing, installation or for a special order. Also
20 excluded from the Class are Defendant, its corporate parents, subsidiaries and affiliates, officers
21 and directors, any entity in which Defendant has a controlling interest, and the legal
22 representatives, successors or assigns of any such excluded persons or entities.

23 22. The members of the Class are so numerous that joinder of all members is
24 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,
25 such information can be ascertained through appropriate discovery, from records maintained by
26 Defendant and its agents.

27 23. A class action is superior to other available methods for the fair and efficient
28 adjudication of this controversy because joinder of all members is impracticable, the likelihood

1 of individual Class members prosecuting separate claims is remote and individual Class
2 members do not have a significant interest in individually controlling the prosecution of separate
3 actions. Relief concerning Plaintiff's rights under the laws alleged herein and with respect to the
4 Class as a whole would be appropriate. Plaintiff is not aware of any difficulty to be encountered
5 in the management of this action which would preclude its maintenance as a class action. There
6 is a well-defined community of interest among the members of the Class because common
7 questions of law and fact predominate, Plaintiff's claims are typical of the members of the Class,
8 and Plaintiff can fairly and adequately represent the interests of the Class.

9 24. Common questions of law and fact exist as to all members of the Class and
10 predominate over any questions affecting solely individual members of the Class. Among the
11 questions of law and fact common to the Class are:

12 (a) whether each Class member engaged in a credit card transaction with
13 Defendant;

14 (b) whether Defendant collected personal identification information from the
15 cardholder in conjunction with credit card transactions with Class members;

16 (c) whether Defendant's conduct of collecting personal identification
17 information from the cardholder in conjunction with credit card transactions constitutes
18 violations of California Civil Code section 1747.08; and

19 (d) whether Plaintiff and the Class are entitled to civil penalties, and the
20 proper amount of civil penalties to be paid to Class members.

21 25. Plaintiff's claims are typical of those of the other Class members because Plaintiff,
22 like every other Class member, was exposed to virtually identical conduct and are entitled to
23 civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to
24 California Civil Code section 1747.08(e).

25 26. Plaintiff can fairly and adequately represent the interests of the Class, she has no
26 conflicts of interest with other Class members, and has retained counsel competent and
27 experienced in class action and civil litigation.

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CAUSE OF ACTION FOR VIOLATIONS OF
CALIFORNIA CIVIL CODE § 1747.08
[SONG-BEVERLY CREDIT CARD ACT OF 1971]

27. Plaintiff refers to and incorporates by reference as though set forth fully herein paragraphs 1 through 26 of this Complaint.

28. California Civil Code section 1747.08 prohibits any corporation, which accepts credit cards for the transaction of business, from collecting personal identification information from cardholders in conjunction with a credit card transaction.

29. Defendant is a corporation that accepts credit cards for the transaction of business. During credit card transactions entered into at Defendant's stores during the Liability Period, Defendant utilized customer information capture cards which contained preprinted spaces for Plaintiff and members of the Class to write their respective: (i) names; (ii) email addresses; (iii) addresses (including ZIP code); (iv) birth dates; (iv) home telephone numbers; and (v) mobile telephone numbers. It was, and is, Defendant's policy and practice to request credit card customers, while standing at the point-of-sale in conjunction with credit card transactions, to write their personal identification information upon the customer information capture card in the form of their: (i) names; (ii) email addresses; (iii) addresses; (iv) birth dates; (iv) home telephone number; and (v) mobile telephone number, and to subsequently enter such information into its electronic customer database at the point-of-sale.

30. It is and was Defendant's routine business practice to intentionally engage in the conduct described in this cause of action with respect to customers who, while using a credit card, purchased products from Defendant's stores in the State of California during the Liability Period. Due to Defendant's violations as set forth herein, Plaintiff and the Class are entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation pursuant to California Civil Code section 1747.08(e).

WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

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VI. PRAYER FOR RELIEF

PLAINTIFF AND THE CLASS pray for judgment against Defendant as follows:

1. That the Court certifies this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. That the Court award to Plaintiff and to each member of the Class the civil penalty to which she is entitled under California Civil Code section 1747.08(e);
3. For distribution of any moneys recovered on behalf of the Class of similarly situated consumers via fluid recovery or *cy pres* recovery where necessary to prevent Defendant from retaining the benefits of its wrongful conduct;
4. For an award of attorneys' fees as authorized by statute including, but not limited to, the provisions of California Code of Civil Procedure section 1021.5, and as authorized under the "common fund" doctrine;
5. For costs of the suit;
6. For prejudgment interest at the legal rate;
7. And for such other relief as the Court may deem proper.

DATED: August 17, 2012

STONEBARGER LAW, APC

By /s/ Gene J. Stonebarger
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